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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICKEY A. BECHTEL,

Plaintiff :

v. :

DANIEL A. VIRTUE, Business Agent
of the International Brotherhood of
Teamsters; INTERNATIONAL
BROTHERHOOD OF TEAMSTERS;
LOCAL 776, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS;
ABF FREIGHT SYSTEM, INC.,

Defendants :

FILED
HARRISBURG

AUG 7 2001

MARY E. D'ANDREA, CLERK
Per h
DEPUTY CLERK

¹
NO. ~~3~~ CV-01-0789
(Judge Sylvia H. Rambo)

**DEFENDANTS DANIEL A. VIRTUE, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS LOCAL 776, and
INTERNATIONAL BROTHERHOOD OF TEAMSTERS'
ANSWER TO PLAINTIFF'S COMPLAINT**

Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and
Local 776, International Brotherhood of Teamsters, hereby answer Plaintiff's
Complaint as follows:

1. Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters admit that Plaintiff claims to invoke the jurisdiction of this Court under Section 301 of the Labor Management Relations Act, 29 U.S.C. §185, and 28 U.S.C. §1331, *et seq.* This Court's jurisdiction is a matter of law, therefore, no response is required. Defendants Daniel A. Virtue, International Brotherhood of Teamsters Local 776, and International Brotherhood of Teamsters deny the remaining allegations of Paragraph 1 of Plaintiff's Complaint.
2. Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters admit that Plaintiff claims that venue is conferred upon the Court under 28 U.S.C. §1391(b). Proper venue is a question of law, therefore, no response is required. Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters deny the remaining allegations of Paragraph 2 of Plaintiff's Complaint.
3. After reasonable investigation, Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters lack information or knowledge sufficient to form a belief as to the

truth of the allegations in Paragraph 3 of the Complaint, and accordingly they are denied.

4. (1) Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters admit that Defendant Daniel A. Virtue is an adult individual employed as President and Business Agent for Teamsters Local 776, located at 2552 Jefferson Street, Harrisburg, Pennsylvania, 17110-2505. Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters deny that Defendant Daniel A. Virtue was the sole individual responsible for the administration of the International and Local Union's rights and obligations, including the Union's involvement with the grievance arbitration process under the controlling collective bargaining agreement.
- (2) Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters admit that the International Brotherhood of Teamsters headquarters are located at 25 Louisiana Avenue, NW, Washington, D.C., 20001, and deny the remaining allegations contained in Paragraph 4(2) of Plaintiff's

Complaint.

- (3)(i)-(iii) Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters admit that Teamsters Local 776 is a labor organization, and that its offices are located at 2552 Jefferson Street, Harrisburg, Pennsylvania, 17110-2505. The remaining allegations contained in Paragraphs 4(3)(i)-(iii) are denied.
- (4) Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters admit that to the best of their information and belief, Defendant ABF is a corporation with headquarters located at 3801 Old Greenwood Road, Fort Smith, Arkansas, 72903-5937, and that it is a common carrier of freight with a terminal located in Carlisle, Pennsylvania. Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters lack sufficient information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph 4(4) of Plaintiff's Complaint, and they are, therefore, denied.

BACKGROUND

5. After reasonable investigation, Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters lack information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of Plaintiff's Complaint and they are, therefore, denied.
6. After reasonable investigation, Defendants Daniel A. Virtue, International Brotherhood of Teamsters, Local 776, International Brotherhood of Teamsters lack information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of Plaintiff's Complaint and they are, therefore, denied.
7. After reasonable investigation, Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters lack information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of Plaintiff's Complaint and they are, therefore, denied.
8. After reasonable investigation, Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of

Teamsters lack information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of Plaintiff' s Complaint and they are, therefore, denied.

9. After reasonable investigation, Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters lack information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of Plaintiff' s Complaint and they are, therefore, denied.
10. After reasonable investigation, Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters lack information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of Plaintiff' s Complaint and they are, therefore, denied.
11. After reasonable investigation, Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters lack information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of Plaintiff' s Complaint and they are, therefore, denied. Defendant ABF, at the arbitration of Plaintiff=s

- grievance, raised the issue of timeliness, which was not ruled upon.
12. Admitted.
 13. Denied.
 14. Denied as stated. Plaintiff's grievance was processed through the Eastern Region Joint Area Committee, which referred the grievance to the National Multi-Region Change of Operations Violations Committee, which, pursuant to the terms of the applicable collective bargaining agreement provisions denied Plaintiff's grievance.

COUNT I - BREACH OF CONTRACT

15. Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters hereby incorporate by reference their Answers to Paragraphs 1 through 14 of Plaintiff's Complaint, inclusive, as if they were fully set forth here.
16. Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, and International Brotherhood of Teamsters deny the allegations contained in Paragraph 16 of Plaintiff's Complaint.
17. After reasonable investigation, Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of

Teamsters lack information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of Plaintiff's Complaint and they are, therefore, denied.

18. After reasonable investigation, Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters lack information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of Plaintiff's Complaint and they are, therefore, denied.
19. After reasonable investigation, Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters lack information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of Plaintiff's Complaint and they are, therefore, denied.
20. Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, and International Brotherhood of Teamsters admit that the ABF facility is located near a facility formerly operated by Carolina Freight, but lack information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 20 of Plaintiff's Complaint and

they are, therefore, denied.

21. Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters deny the allegations contained in Paragraph 21 of Plaintiff's Complaint.
22. Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters deny the allegations contained in Paragraph 22 of Plaintiff's Complaint.
23. Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters deny the allegations contained in Paragraph 23 of Plaintiff's Complaint.
24. Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters deny the allegations contained in Paragraph 24 of Plaintiff's Complaint.

COUNT II
UNIONS BREACH OF ITS DUTY OF FAIR REPRESENTATION
BY MISHANDLING THE ENSUING GRIEVANCE OR
ARBITRATION PROCEEDINGS.

- 26.(sic) Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters hereby incorporate their Answers to Paragraphs 1 - 24 of Plaintiff's Complaint,

inclusive, as if they were fully set forth herein.

27. Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters deny the allegations contained in Paragraph 27 of Plaintiff's Complaint.
28. Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters deny the allegations contained in Paragraph 28 of Plaintiff's Complaint.
29. Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters deny the allegations contained in Paragraph 29 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of arbitration and award.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has failed to exhaust available administrative, contractual, and internal union remedies.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over Plaintiff's claims.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of collateral estoppel and *res judicata*.

WHEREFORE, for all these reasons, Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters respectfully requests that this Honorable Court dismiss Plaintiff's Complaint in its entirety, with prejudice, award judgment in favor of Defendants Daniel A. Virtue, International Brotherhood of Teamsters, and Local 776, International Brotherhood of Teamsters and award them costs and expenses, including attorney's fees which they have been forced to incur in defending against this action.

Respectfully Submitted,

IRA H. WEINSTOCK, P.C.

800 North Second Street

Harrisburg, PA 17102

Phone: 717-238-1657

By: *Ira H. Weinstock*
IRA H. WEINSTOCK

CERTIFICATE OF SERVICE

I, Ira H. Weinstock, Esquire, hereby certify that upon the date stated below, I served the attached Motion upon the persons named below, at the stated addresses, by first class postage paid United States mail.

Robert S. Mirin, Esquire
AHMAD & MIRIN
8150 Derry Street, Suite A
Harrisburg, PA 17111

James A. McCall, Esquire
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001

Vincent Candiello, Esquire
MORGAN, LEWIS & BOCKIUS, L.L.P.
One Commerce Square
417 Walnut Street
Harrisburg, PA 17101-1904



IRA H. WEINSTOCK

Date: 8/7/01